Supreme Court of the United States

OCTOBER TERM, 1958

No. 19

UNITED MINE WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA, DISTRICT 28, *Petitioners,*

v.

BENEDICT COAL CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Mine Workers of America and United Mine Workers of America, District 28 (herein called "UMW" and "District 28" or "District", respectively), and each of them, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit[1] entered September 26, 1958 in Case No. 13,056, styled United Mine Workers of America and United Mine Workers of America, District 28, Appellants, v. Benedict Coal Corporation,[2] Appellee, wherein the Sixth Circuit set

[1] Herein the United States Court of Appeals for the Sixth Circuit is referred to as either the "Court of Appeals" or "Sixth Circuit".

[2] Herein Benedict Coal Corporation will be referred to as "Benedict".

aside a judgment entered by the United States District Court for the Eastern District of Tennessee, Northeastern Division,[3] in favor of said coal corporation and against petitioners for $81,017.68 but remanded the case for a new trial on the issue of damages alone (A. 14a, 21a).[4]

A certified appendix record in said case, together with the proceedings in the Sixth Circuit, is furnished herewith, in accordance with the Rules of this Court.

OPINION BELOW

The Sixth Circuit's opinion appears in the Appendix hereto at page 1a et seq.; in the certified record; and it is reported in 259 F. 2d 346 (Adv. Op. November 17, 1958).

JURISDICTION

The Court of Appeals' judgment reversing the trial court's judgment with directions, as aforesaid, was entered September 26, 1958 (A. 21a). The jurisdiction of this Court is invoked under 28 U.S.C., Sections 1254(1) and 2101 (c).

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The basis for Federal jurisdiction in the United States District Court of the original complaint was diversity of citizenship between the plaintiffs and the defendant and the amount involved.

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[3] Herein the United States District Court for the Eastern District of Tennessee, Northeastern Division will be referred to as the "trial court" or "district court".

[4] Herein the abbreviation "R." refers to the printed certified record under Rule 20 [redacted] of said Court, filed in the Supreme Court of the United States, while the abbreviation "A." refers to the Appendix to the instant Petition.

The cross-claim was filed under the provisions of Title 29, U.S.C. Secs. 185 and 187. The basis for Federal jurisdiction thereof was diversity of citizenship between the cross-claimant and cross-claim defendants and the amount involved, in addition to said statutes.

QUESTIONS PRESENTED

1. Where (1) the settlement of disputes section of collective bargaining agreements antedating 1950 provided that Mine Workers shall not engage in a work stoppage pending settlement of disputes under grievance machinery procedures and such agreements contained other "no strike" clauses, and (2) under the Labor Management Relations Act, 1947,[4a] the right to strike became a bargainable subject, and (3) in 1950 UMW and coal operators signatories to the National Bituminous Coal Wage Agreement of 1950, deleted such clauses therefrom and expressly covenanted that the "no strike" clauses in prior agreements were rescinded and made null and void, and (4) signatories to such 1950 Agreement covenanted that stoppages, as well as disputes, shall be settled exclusively under grievance machinery procedures set forth in such contract, is a stoppage of work pending settlement of a dispute cognizable under the grievance machinery procedures proscribed thereby and a violation of the 1950 Agreement so as to subject UMW and District 28 to damage actions under the Act's Section 301?

2. Where (1) the settlement of disputes section of collective bargaining agreements antedating 1950 provided that Mine Workers shall not engage in a

[4a] The Labor Management Relations Act, 1947, is herein called the "Act."

work stoppage pending settlement of disputes under grievance machinery procedures and such agreements contained other "no strike" clauses, and (2) under the Act the right to strike became a bargainable subject, and (3) in 1950 UMW and coal operators signatories to said 1950 Agreement deleted such clauses therefrom and expressly covenanted that the "no strike" clauses in prior agreements were rescinded and made null and void, and (4) signatories to the 1950 Agreement covenanted that stoppages, as well as disputes, shall be settled exclusively under grievance machinery procedures set forth in such contract, and (5) signatories to the 1952 Agreement carried forward therein the 1950 Agreement's express covenants that the "no strike" clauses in prior agreements were rescinded and made null and void and deleted both the provision contained in the 1950 Agreement that stoppages shall be settled under the grievance machinery procedures and the provision that settlement by such procedures shall be the exclusive method, is a stoppage of work pending settlement of disputes which are cognizable under the grievance procedures proscribed by the 1952 Agreement so as to constitute a violation thereof and to subject UMW and District 28 to damage actions under the Act's Section 301.

3. Is the testimony of one employee witness that a District field representative prior to a strike and several times thereafter told him, "I can't tell you to strike, but when I tell you when you don't get what you want why you boys know what to do", which the witness testified he understood to mean "to strike", and the witness is unable to fix the time of such utterances, and such statement was not transmitted by him to other employees who engaged in strike activity, and the witness admitted he called no strike activity him-

self, sufficient to warrant a jury finding, and the District Court's and Sixth Circuit's approval thereof, that the field representative induced the strike?

4. Even if such testimony suffices to sustain the conclusion that the field representative induced the strikes, was the field representative acting within the scope of his authority in making such statement so as to impute responsibility therefor to District 28 under Sections 301(b) and 301(e) of the Act for strikes resulting from disputes cognizable under the grievance procedures of collective bargaining agreements?

5. In the absence of proof that UMW authorized, participated in or ratified work stoppages allegedly induced by an agent of District 28, is UMW liable or responsible therefor on the theory that, as a matter of law, District 28 and its agents are likewise agents of UMW under Section 301(b) and 301(e) of the Act with respect to such stoppages and that strike activity of such agents may be imputed to UMW?

6. Under applicable law, is there sufficient evidence to support the jury's determination, and approval thereof by the District Court and the Sixth Circuit, that eight of the alleged strikes resulted from localized labor disputes which were cognizable under the settlement procedures of the several Agreements in effect at the times of such strikes; that UMW and District 28 violated the provisions of such Agreements; that representatives of UMW and District 28 with authority induced such strikes; and that UMW and District 28 are responsible for each of such strikes?

7. Where one employee witness testified that a District field representative told him, "When we didn't get what we wanted, we knowed what to do", and was

permitted to state, over objections, that he understood such statement to mean "to strike", was it prejudicial and reversible error for the trial court to permit such witness to testify what his understanding was of such statement?

8. Under applicable law, was there sufficient evidence to warrant the trial court's submitting to the jury the question of whether UMW and District 28 violated, and the jury's finding that they had violated, Section 303 of the Act in connection with the M. M. Campbell strikes?

9. Under applicable law, was there sufficient evidence to warrant the trial court's submitting to the jury the question of whether UMW and District 28 violated, and the jury's finding that they had violated, Section 303 of the Act in connection with the Big Mountain Coal Company strike?

STATUTES INVOLVED

The pertinent statutory provisions involved are Sections 301(a), (b) and (e), 303 and 13 of the Labor Management Relations Act, 1947 [29 U.S.C., Section 185(a), (b) and (e), Section 187 and Section 163] and appear in the Appendix hereto (p. 25a et seq.).

STATEMENT OF THE CASE

1. The Pleadings, Trial Proceedings and the Sixth Circuit's Judgment

Trustees of the United Mine Workers of America Welfare and Retirement Fund, by complaint filed in the trial court,[3] sought judgment against Benedict for

[3] The Trustees' action was styled John L. Lewis, Charles A. Owen and Josephine Roche, as Trustees of the United Mine Workers of

unpaid royalties on coal mined by Benedict which were due and owing under the National Bituminous Coal Wage Agreement of 1950 and as amended in 1951 and 1952.[6]

In its answer, Benedict denied liability to the Trustees, asserted *inter alia* that UMW had breached its agreement with Benedict, and, pursuant to Sections 301 and 303 (29 USCA 185 and 187) of the Act, as cross-complainant filed its cross-claim[7] against UMW and District 28 for $148,078.85 of compensatory damages (R. 64a) upon allegations, denied by UMW and District 28 in its answer and amended answer (R. 46a, 72a), that said unions had breached the Agreements effective during 1950-1953 by calling "a number of unlawful strikes" at Benedict mines during that period, during which and previous to such strikes Union agents refused to arbitrate matters in dispute and to follow the contractual provisions for adjustments of disputes and directed, authorized or ratified strikes by Union members and Benedict employees (R. 43a); that UMW and District 28 agents and employees called a strike at Benedict mines

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America Welfare and Retirement Fund v. Benedict Coal Corporation in the trial court. Judgment rendered therein was appealed by the Trustees and was docketed as No. 13,055 in the Sixth Circuit. Substitution of Henry G. Schmidt as successor Trustee to Charles A. Owen was granted by the Sixth Circuit, October 16, 1958.

[6] The National Bituminous Coal Wage Agreement of 1950 (R. 88a) will be called the "1950 Agreement", that Agreement as amended January 18, 1951 (R. 118a), the "1951 Agreement", and the 1950 Agreement as amended September 29, 1952 (R. 108a) the "1952 Agreement".

[7] The original cross-claim is found beginning at page 25a of the printed record and amendments thereto begin at pages 37a, 41a, and 61a thereof.

to force employees of Big Mountain Coal Company, a Benedict lessee, to join "the said Union and . . . . the Benedict local" (R. 31a), which strike, called, incited and encouraged by said agents, was unlawful because its purpose was to force Benedict to cease doing business with Big Mountain, to force Big Mountain's employees to become dues-paying members against their will and to force Big Mountain to recognize and bargain with UMW and District 28, "which had not been certified according to law" (R. 32a); and that UMW and District 28 agents "threatened and harassed the employees of M. M. Campbell", a contractor engaged by Benedict on a construction project and whose employees were neither union members nor represented by UMW, whose agents called strikes at Benedict mines to force Campbell to sign an UMW contract, to employ miners cut off from Benedict's mines and "to cut dues of certain of his employees", with the unions, their agents and members failing and refusing "to use the methods" in the contracts between UMW and Benedict for "the adjustment and settlement of" disputes and "to arbitrate the matters in dispute" and "to prevent the said strikes by the use of proper disciplinary measures" in violation of the Labor Management Relations Act and said contracts, and as a result of which strikes "and of other harassment", Campbell was forced to abandon the project (R. 62a, 63a).

In their answer and amendments thereto, UMW and District 28, denying the material allegations of the cross-complaint, alleged upon advice that the strikes had been "brought about largely, if not entirely, because of the arbitrary and unreasonable

conduct" of Benedict and that Benedict had breached the bargaining contracts and disregarded its obligations to its employees by failing to pay, or being grossly delinquent in the payment of vacation pay, in payments to the Fund, and in other ways (R. 46a-53a, 72a).

Upon jury trial, a verdict of $81,017.68 against UMW and District 28 was rendered (R. 74a). A verdict against Benedict in favor of the Trustee was rendered for $76,504.21[8] (R. 74a). The trial court entered judgment in said amount in Benedict's favor against both UMW and District 28, "for which execution may issue"; and ordered that said sum be paid into the Court's registry, with directions to the clerk that of said amount the sum of $76,504.26 be paid to the Trustees and that the difference be paid to Benedict (R. 76a). One-half of costs were ordered to be paid by Benedict, the other half by UMW and District 28, "for which execution may issue, unless said costs are paid" (R. 76a). Petitioners noted their exceptions to the trial court's jury charge (R. 738a-42a). Motion for a new trial was denied petitioners (R. 77a, 86a).[9]

Upon appeal, the Sixth Circuit, by judgment entered September 26, 1958, set aside the trial court's judgment because of errors "affecting the amount of

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[8] The verdict for $76,504.21 was placed in the judgment (A. 76a) as $76,504.26.

[9] Petitioners' assigned grounds to set aside the jury verdict, to vacate judgment entered thereon, and for a new trial appear in the printed record beginning on page 77a.

damages Benedict was entitled to recover from the Unions" and remanded the case "solely for a redetermination . . . of the amount of damages" Benedict is entitled to recover against Petitioners (A. 21a).

On the issue of liability, the Sixth Circuit regarded the basic issues to be (1) Did any or all of the strikes in question violate the agreement of 1950-52[10] if they were caused by the Unions? (2) If so, was there sufficient evidence to support a finding that either District 28 or the International Union was responsible for any or all of the strikes? Like the trial court, the Sixth Circuit answered such issues in the affirmative. While, as indicated, the Sixth Circuit has remanded the case for retrial upon the issue of damages, review by writ of certiorari at this posture of the case is appropriate, since the element of damages of necessity is predicated upon issues of liability which petitioners assert were erroneously decided by both the Sixth Circuit and the trial court. Cf. *United States* v. *General Motors Corporation*, 323 U. S. 373, 377; *Land* v. *Dollar*, 330 U. S. 731, 734; *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U. S. 682, 685; *U. S.* v. *Gulf Refining Co.*, 268 U. S. 542, 545.

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[10] Having determined—erroneously, petitioners assert—that certain strikes were "cognizable under the settlement procedures", the Sixth Circuit declared it "unnecessary to consider whether two of these strikes also violated the Labor Management Relations Act of 1947" (A. 7a).

2. The Facts

a. As to Whether the Strikes Were Violative of the Collective Bargaining Agreements

Benedict, a coal producer in Lee County, Virginia, was a signatory to the 1950, 1951 and 1952 Agreements, effective during the period of March 5, 1950-June, 1953, when the strikes involved allegedly occurred. Benedict's assertion that such strikes violated the Agreements necessitates examination of pertinent provisions thereof.

THE 1950 AGREEMENT

By specific recitals in the 1950 Agreement, terms of certain antecedent agreements in the bituminous coal industry were carried forward, subject to the terms and conditions of the 1950 Agreement (R. 88a).[11] These antecedent agreements mandated that "Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute" (R. 124a);[12] that "A strike or stoppage of work on the part of the Mine Workers shall be a violation of this Agreement" (R.

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[11] These were:

(1) the Appalachian Joint Wage Agreement of 1941 (R. 122a),

(2) the Supplemental Six-Day Work Week Agreement,

(3) the National Bituminous Coal Wage Agreement of 1945 (R. 120a), and

(4) all various District Agreements based upon the aforesaid basic Agreements as such district agreements existed on March 31, 1946—but all "subject to the terms and conditions of the 1950 Agreement and as amended, modified and supplemented" thereby.

[12] Appalachian Joint Wage Agreement of 1941 (R. 122a, 124a).

125a);[13] and that "For the duration of this Agreement no strikes shall be called or maintained hereunder."[14]

The 1947 Agreement (R. 126a), executed after enactment of the Taft-Hartley Act, expressly "rescinded, cancelled, abrogated and made null and void" the "no strike", "penalty" and "Illegal Suspension of Work" clauses of prior Agreements (R. 127a, 129a); UMW members were to work when "willing and able", and stoppages, in addition to disputes, were to be settled exclusively by grievance machinery procedures (R. 129a).

The 1950 Agreement continued repeal of the "no-strike" clauses (R. 106a). Moreover, whereas the 1941 Agreement's "Settlement of Disputes" section mandated that pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute (R. 124a), and "there shall be no suspension of work on account of" disputes, that provision was deleted in the 1947 Agreement (R. 126a) and no proscription against stoppages is contained in the corresponding disputes section of the 1950 Agreement[15] which set forth the settlement steps as (1) between the aggrieved party and mine management, (2) through mine management and the mine committee, (3) through district

[13] Appalachian Joint Wage Agreement of 1941 (R. 125a).

[14] The 1945 Agreement appears, in part, in the printed record at pages 120a-121a, but the quoted language in the text above found in Section 13 of that Agreement was inadvertently omitted.

[15] The 1950 Agreement's "Settlement of Local and District Disputes" section reads in part thus (R. 104a):

> "Should differences arise between the Mine Workers and the Operators as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately: . . ."

representatives and a commission representative (where employed) of the coal company, (4) by a board of two designated "by the Mine Workers and two by the Operators", and (5) reference to an umpire (R. 104a). *This manifestly pertinent change was completely ignored by the Sixth Circuit.* The latter agreement recognizing, not only the right to strike, provided that stoppages, in addition to disputes, were to be settled exclusively by procedures under the grievance machinery (R. 106a); and UMW and the Operators affirmed "their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement" (R. 106a). It contained no express waiver or limitation of the right to strike.

The 1951 Agreement and Directive From UMW

The foregoing provisions of the 1950 Agreement were carried forward into the 1951 Agreement, which became effective February 1, 1951.

On October 24, 1951 UMW issued a directive "to all Members, Committeemen and Officers of all Local Unions", UMW (R. 499a-501a), against unauthorized strikes, declaring them to be in conflict with its Constitution and policies.

The 1952 Agreement

In negotiating the 1952 Agreement, UMW preserved the deletion and repeal of the "no-strike" and kindred clauses. The 1950 Agreement's covenant that "stoppages" be settled "exclusively" by the grievance procedures of the contract was expunged. Likewise,

the 1952 Agreement released UMW from the 1950 "best efforts" obligation by striking the "best efforts" clause. Instead the 1952 Agreement provided that (R. 113a):

> "3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts."

Like the 1950 Agreement, the 1952 Agreement contained no waiver or limitation of the right to engage in a work stoppage.

The Sixth Circuit's Conclusion

Despite these pertinent amendments made in the 1952 Agreement, the Sixth Circuit professed that "the obligation to resort to the specified procedure was not substantially changed" (A. 6a).

In the trial court, in exceptions to the jury charge, in motions for directed verdict (R. 713a) and motion for new trial (R. 738a-42a, 77a), petitioners, asserted that the strikes were not in violation of the Agreements, which the trial court rejected. Though the Sixth Circuit agreed that "the Agreement expressly stated that the 'no strike' provisions of the

previous contracts were superseded" and that "the right to strike . . . was expressly preserved in the 1950-52 agreement" (A. 6a), it declared that determination of whether the strikes violated such agreement "depends upon what effect the agreement to settle all local disputes in accordance with the 'Settlement of Local and District Disputes' procedure had upon the right to strike", and it concluded that "a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement". It reasoned that its conclusion "does not make meaningless the express abrogation of a no strike clause in the 1950-52 Agreement"; that the "right to strike was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement"; and though professing that "the Unions remained free from liability for spontaneous or 'wildcat' strikes", defined by that Court as "the kind of 'stoppages' and 'suspension of work' which the agreement made subject to the settlement procedure therein provided" (A. 6a-7a), and although the Sixth Circuit concluded that the strikes "resulted from localized labor disputes which were cognizable under the settlement procedure" (A. 7a), wholly inconsistent therewith it nevertheless placed its imprimatur upon the trial court's holding that UMW and District 28 were liable for strike activity.

b. Issue Relating to Whether UMW and District 28, or Either, Was Responsible for the Strikes.

Benedict grounded UMW and District 28's responsibility upon eleven alleged strikes. As to two, the Sixth Circuit held the evidence insufficient to show the stoppages "were concerted strikes resulting from a

labor dispute"; that they were "clearly spontaneous" and therefore "did not constitute violations of the 1950-52 Agreement" (A. 7a).[16] It likewise excluded a third strike because of its being "national in scope. (the) dispute was not under the agreement subject to settlement on the local or district level" (A. 7a).[17] As to the remaining eight strikes, the Sixth Circuit held "the evidence was sufficient to support the jury's determination that they resulted from localized labor disputes which were cognizable under the settlement procedure provided by the agreement" (A. 7a). The facts relating to these eight strikes are set forth below.[18] Neither UMW nor District 28 authorized, called, participated in or ratified any of them. In each strike situation, the miners voluntarily refused to work; and in each of the situations when District 28 representatives were called concerning the respective disputes which occasioned the stoppages, the grievances were settled and the miners returned to work.

A Benedict witness, James Scott, testified that Scroggs advised him that "I can't . . . tell you to strike,

[16] The two strikes thus excluded were (1) the Water Strike of September 27, 29, 1950, and (2) the Collingsworth Strike of January 10-11, 1951.

[17] The third strike excluded by the Sixth Circuit was the "Wage Stabilization Strike" of October 16-28, 1952.

[18] The dates and characterization of the eight strikes are as follows:

1950—April 14 and 17,	the seniority strike;
1951—July 30-31,	the vacation pay strike;
1951—October 1-8,	the credit strike;
1951—November 2, 7,	the Ernest Tabor strike;
1952—February 7-8) August 24-25),	the M. M. Campbell strikes;
1952—August 5-6,	the Anders-Roark strike;
1953—May 18-19,	the Big Mountain Coal Co. strike

but when I tell you when you don't get what you want why you boys know what to do then" (T. 408a); and although Scott was unable to specify the occasion (see *post*, p. 43) Benedict contended that each of the alleged strike situations occurred after such statement and that petitioners never exercised any effort through available disciplinary measures to prevent strikes pending dispute settlements.

The Strikes

(1). In the seniority strike of April 14 and 17, 1950, a dispute arose over which miners were to be laid off. Benedict contended that each seam operated was a separate mine; the miners contended that seniority provisions were to be applied as one mine. The men refused to work. Benedict called Lloyd Scroggs, District 28 field representative. At a meeting between Scroggs, the mine committees, and Benedict representatives, Benedict's General Manager Darst testified he requested Scroggs to get the men back to work and arbitrate the men's grievances, yet Benedict's Superintendent Fritz related Scroggs' attitude to be to "try to get the thing settled and the men back to work and as far as anything that he did say in respect to this meeting, that if it did go before the Arbitration Board it might not be settled to suit the company or the men" (R. 567a). While Fritz could not say that Scroggs did not want it to go to arbitration, likewise he could not say that Darst wanted it to go there either. Fritz described the meeting thus: "(T)hey were in there trying to get it settled, not to take it before the Arbitration Board" (R. 568a-9a). Although Darst related Scroggs did not attempt to get the men to resume work pending settlement (R. 159a), the dispute was

settled at the meeting; and the men voted to work (R. 604a).

(2). The 1951 Agreement provided for annual vacation pay and for pro rata payments for employees. On the last pay day in June approximately 25 men had their store accounts deducted from their vacation pay (R. 166a, 274a). The Agreement's check-off provision did not provide therefor. Thus arose a dispute; and although Darst did not recall it, employees related that Darst promised that Benedict would pay this vacation pay on the last pay day in July (R. 166a, 275a, 533a). The parties met concerning these strikes "all through" July, during which Darst admits he made no request for arbitration (R. 166a, 275a, 281a). Scroggs agreed with the men. Darst was "almost positive" he requested arbitration (R. 276a) which he claimed Scroggs refused. As Darst stated, and denied by Scroggs (R. 581a), he heard Scroggs tell the mine committee after one of the meetings, "Boys, it looks like you are going to have to take this matter into your hands" (R. 167a). Upon Benedict's failure to pay the vacation pay in July, the employees struck on July 30 and 31, 1951 (R. 166a). Scroggs related he advised the men to return to work and that the matter could be settled (R. 578a). Always when called in on a dispute, Scroggs "tried to negotiate or settle the matter" (R. 597a). Thereafter the mine committee met with Darst and it was agreed that individuals could claim the full vacation pay but those willing to have amounts credited to their account could do so (R. 168a).

(3). Benedict had extended limited company store credit to idle panel members. Prior to October 1, 1951,

Benedict notified the men and the local union of its financial inability to continue the arrangement. A meeting between Benedict and the mine committee was abortive of results, and the men refused to work on October 1-8. Darst testified he tried, unsuccessfully, to get the mine committee to arbitrate (R. 169a). At a meeting between Benedict and the local union, Scroggs, who had been called by Benedict, asserted, according to Darst, that Benedict should continue the credit arrangement. Scroggs' account is that he attended one meeting at Darst's request, where he stated that Benedict should carry the men as far as it could (R. 580). Scroggs was not certain that the men were then on strike. However, at another meeting Benedict consented to continue to give credit; the local union agreed to guarantee the accounts which was what Benedict asked it to do (R. 283a); and the mines resumed operation (R. 170a, 282a).

(4). Although Darst related that a fourth strike on November 2 and 7, 1951, concerned Ernest Tabor's discharge for chronic absenteeism, and that Tabor was reemployed when District 28's field representative Clark "practically on bended knee made the company take [Clark] back to work" (R. 171a-3a), and Jim Scott, a mine committeeman, testifying for plaintiff, claimed Scroggs participated in the Tabor dispute (R. 418a), actually Clark was not employed by District 28 until July, 1952, eight months after Tabor was discharged (R. 636a) and a mine committeeman did not remember any work stoppage because of Tabor's discharge (R. 607a). Scroggs testified he knew nothing of the Tabor matter (R. 581a), and one witness related that no District 28 representative was involved (R.

550a-1a, 617a, 620a). A witness for Benedict could not recall a District 28 representative being present (R. 436a f. No grievance was filed in the Tabor incident (R. 616a).

(5-6). M. M. Campbell about August 15, 1951, under a contract with Benedict, started a construction project (R. 181a-184a). Shortly thereafter Campbell discussed with District 28's field representative Scroggs about a collective bargaining agreement for his employees and joining the union himself (R. 581a-2a). Campbell's version is that he continued to work without difficulty until after the beginning of 1952. Prior thereto Campbell talked with the local union's mine committee which wanted him to hire coal miners laid off by Benedict. On January 15, 1952, a meeting was had with Benedict's Darst and Mine Superintendent Fortner, Campbell and the Mine Committee. Scroggs was called to this meeting. Darst's account is tha it was insisted that Campbell employ the laid off Benedict employees (R. 185a) and credited Scroggs with saying that if the mine worked Benedict men were going to have to work on the Campbell working force (R. 187a). Campbell did not so testify, but related that Scroggs told Mine Committeeman Jim Scott "if we don't get what we want, you know what to do" (R. 340a). Scroggs (R. 585a), denying such statements were made, related he left the meeting during an argument between Campbell and Lynn, then local union president, because of the impossibility of accomplishing anything at the meeting (R. 557a, 583a-4a). Lynn testified that at no time during 1950-53 did any District representative tell the local union to strike, but to the contrary such representatives urged them to return to work (R. 577a).

Darst's testimony was that a strike occurred on February 7 and 8, 1952, over the Campbell matter (R. 189a); Campbell testified that there was a strike of one-half day (R. 340a); but Local Union President Lynn did not recall any strike (R. 552a). Following the meeting and the alleged strike, Campbell, with two local union mine committeemen of the Benedict local, went to Norton, Virginia, and signed a contract with District 28. While the record does not show the Agreement's date, Allen Condra, District 28's President at that time, who signed the agreement, testified that his notes showed that such meeting was on February 3, 1953[19] (R. 661a). Campbell asserted that at this meeting Condra admitted he had the Benedict mine "blowed out" (R. 341a), a slang expression for "strike" (R. 342a). Condra depicted the meeting with Campbell as very agreeable and as Campbell's being interested in becoming a union member himself (R. 661a-3a). He related that some time thereafter Campbell called him by telephone—a conversation denied by Campbell (R. 712a)—and told him that Darst "was trying to squeeze him out and made it rough on him", to which he (Condra) told him there was nothing the union could do in such a dispute. He never heard from Campbell again (R. 662a-3a). Condra denied he had requested or directed or given encouragement to any Benedict work stoppage (R. 663a).

Darst related another two-day strike occurred in April, 1952 (R. 190a) because of Campbell's not working Benedict men and Campbell's men "not being taken into the local union" (R. 191). Campbell stated such refusal was due to the local's having "men laid off" (R. 346a). There is no evidence as to how the

[19] It is apparent that the event occurred in 1952.

stoppages were concluded nor that Benedict sought aid from District 28 representatives. According to Darst, the local Committee did not want to arbitrate (R. 191a).

Campbell quit his work in August, 1952. Darst's testimony was that Campbell could not "put as big a working force to work" (R. 191a), while Campbell admitted that he kept his force at "not over eight, on account of unemployment compensation (R. 331a).

Former employees of Campbell quoted Campbell as saying the work ended because of Benedict's being "short of money" (R. 672a, 675a) and Benedict's superintendent as saying Benedict ran Campbell off the job (R. 673a).

(7). Benedict discharged two of its employees (Anders and Roark) for negligence when a motor which they were moving plunged over an embankment (R. 173a, 629a-31a). Benedict employees refused to work on August 5 and 6, 1952. In response to Darst's call to District 28, its field representative Clark, with the mine committee, met with Benedict which agreed to return the men to work (R. 174a, 637a).

Darst related his request to Scroggs was to return the men to work and "let the company arbitrate the dispute"; that Clark's position was that Benedict had no right to discharge them and had "to give [them] back their job," and refused to arbitrate; and that Benedict "caved in" again and agreed to reemploy the men (R. 174a). Contrariwise, Clark's version was that he made no threats and after considerable discussion of the merits of the discharges, agreement was reached as to reinstatement (R. 637a) after it had been

demonstrated to Benedict that facts were otherwise than it had mistakingly believed (R. 644a).

Clark denied Benedict wanted to arbitrate this matter (R. 643a). After work resumed Benedict converted the matter into a penalty case (Exhibit 32, R. 130a-3a), and this matter of back pay for the discharged men was referred by agreement to the arbitration board, but it was settled by the aggrieved men's being given some extra work (R. 638a-9a).

(8). In March, 1953, Benedict leased two seams of coal to Ura Swisher (who later incorporated as Big Mountain Coal Company) for strip mining. Big Mountain was to deliver the coal so mined to Benedict's tipple for market preparation. Benedict, which controlled the sale of this coal through its regular sales agency, the Holmes-Darst Corporation, received 25¢ per ton for its preparation service while sales expenses were to be borne by Big Mountain (R. 195a, 303a-4a).

According to Swisher, Big Mountain employees were willing to join the union if they could have a separate local union (R. 434a-5a); and at a meeting Swisher asked Condra therefor (R. 454-6a). Condra explained that he had no authority to decide upon the matter of a separate local, that at the time Big Mountain did not have ten employees, the minimum number for a local union charter, and that he would consider the matter (R. 654a-5a). Darst's version was that Condra told Swisher that, without a contract, "We will do everything in our power to keep you from operating (R. 198a) and that he (Condra) decided whether Swisher's men were to have a separate local (R. 198a).

Swisher related that Condra insisted he sign a union agreement or otherwise there would be trouble with the Benedict local (R. 454). On May 13 Swisher advised Condra by letter (R. 455a-6a) that he was "ready to sign the contract provided his employees were granted a separate local union charter from the men of Benedict." The next day Swisher, writing to Condra, enclosed three signed copies of the 1952 Agreement conditioned upon Big Mountain's employees being granted a separate charter (R. 457a). Replying on May 18, Condra acknowledged receipt of Swisher's latter letter with its enclosures, stating that the matter of a separate charter was "a matter of Policy which will be decided by the United Mine Workers of America" (R. 657a). On the morning of May 18, without Condra's knowledge, Benedict employees struck and picketed the road leading to the Benedict mines and Big Mountain employees would not cross the picket line. Both Benedict and Big Mountain operations ceased (R. 199a, 458a). According to Local Union President Muncey the strike had been called by him because Benedict had failed to make its payment of royalties to the Fund (R. 622a) as required by the Agreement (See 1952 Agreement, Sec. 4 of "Miscellaneous", R. 114a). According to Muncey, upon his advising Benedict employees on May 18 that the royalty had not been paid, the men refused to work. Individual Benedict employees supported this testimony (R. 522a, 542a). As witness Gibson related, the strike had nothing to do with Big Mountain's activity (R. 543a). Upon Muncey's advising the men on May 19 that the royalty had been paid and that they should return to work, the men voted to do so (R. 622a). On the night of May 19 the work sign at the Benedict mine indicated no work was available

(R. 55a). Darst related that he "maybe" received word of the local union's decision on May 20 but because Benedict no longer had orders there was no work for the men (R. 313a). Benedict's superintendent on May 20 stated to one of Benedict's employees who reported for work "you say you are on strike, now Benedict is struck" (R. 546a). Other Benedict employees reported for work on May 20 but left when they saw that the sign had been changed to indicate no work (R. 522a, 539a, 622a). On that day Darst wrote a letter to UMW, copy of which was sent to Condra, complaining of an illegal work stoppage at the mine and stating it was Benedict's intention to hold UMW responsible therefor (R. 240a). Condra's reply on May 26 pointed out that on May 19 the employees had voted to return to work and had been ready since that time (R. 660a). On May 27 Benedict resumed operations when it obtained "another Lake order" (R. 202a). On the same day in a meeting called by Darst and which was attended also by Condra and Scroggs, Darst advised that he wanted to "gang work" the mine to reduce costs.[20] Condra refused such an arrangement (R. 589a), but there was no talk of arbitration (R. 590a) or a strike (R. 658a-9a) and at the discussion's end Swisher came in and again discussed the matter of a separate local for his employees (R. 668a-9a). An injunction issued on the same day in favor of Big Mountain was served on May 28 (R. 459a, 670a). As Condra testified, so far as he knew there was neither picketing nor trouble at the Benedict and Big Mountain operations when the injunction was served (R. 670a).

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[20] Darst wanted to work a group of men and let them share what was made (R. 589a), an arrangement not covered in the bargaining contract.

UMW's Relation to District 28, and the Relation of Each to Local Unions

A controlling question is that of agency. UMW is divided into districts and subdistricts, and local unions which alone have the right to admit employees to membership (R. 379a-85a).

The supreme authority of the International Organization resides primarily in the International Convention which meets every four years (R. 478a) when not less than 3000 delegates elected by union membership are in attendance (R. 478), but during the Convention's recess the International Executive Board is the governing body (R. 380a). UMW officers are elected by the membership (R. 477a).

A district may not issue charters (R. 475a). A district may be autonomous or provisional; it operates within the provisions of the UMW Constitution and the bargaining contracts; it has no authority to dictate to a local union unless the latter violates the Constitution or the contract (R. 477a). The number of locals in a district varies from district to district (R. 477a). District 28 is a provisional district and its president and secretary-treasurer are appointees of UMW's president (R. 510a). Local unions are set up as separate units and there is a minimum membership requirement of ten members in order to establish a local (R. 475a). Upon application to the district for a local union charter, the district president requests the UMW, assigning reasons for his recommendation, for the charter's issuance (R. 475a). If issued by UMW and approved by its Executive Board, the charter is sent to the district and the local is chartered and set up (R. 476a). Subject only to the bargaining agreement,

UMW Constitution and UMW policy, a local makes its own rules and regulations, elects its own officers, and runs its own affairs (R. 476a-7a).

Field Representatives

Field representatives have no authority to call strikes and are prohibited from doing so (R. 503a). District 28's field representatives were appointed by its district president (R. 510a).

Provisions as to Strikes

The constitutional provisions, which govern any local union or subordinate officer's authority to bind the International Union, gives the International Executive Board the power by a two-thirds vote to recommend the calling of a general strike after a referendum vote of the members. Article XVI forbids any district to engage in a strike involving all, or a major portion, of its members without sanction of the International Convention or Board.

Neither districts nor local unions are authorized without sanction of the International Executive Board, to call any strike for which UMW is in any way responsible (R. 758a; A. 28a).

The Sixth Circuit's Conclusions and Judgment

At the conclusion of Benedict's evidence in chief, Petitioners moved for, but the trial court denied, a directed verdict for Petitioners (R. 465a-6a). At the conclusion of all evidence a motion for a directed verdict in Petitioners' favor was again denied (R. 713a-4a).

Upon conclusion of the Court's jury charge (R. 716a-737a), Petitioners excepted to portions of the

charge (R. 738a-742a) which specifically raised the questions of the liability of Petitioners. Likewise Petitioners' motion for a new trial, posing such questions and issues was rejected (R. 77a-81a, 86a).

In the Sixth Circuit Petitioners urged that it was error for the District Court to charge the jury that if the jury found that the strike was encouraged, suggested or ratified by District 28 field representatives UMW and District 28 would be liable for damages resulting therefrom. The Court of Appeals rejected Petitioners' contention, holding that "The district judge was not in error in instructing the jury that District 28 and its agents were agents of the International Union with respect to the activities involved here"; that under 29 U.S.C.A., Section 185(e), the fact that field representatives of the district lacked actual authority to call strikes is not controlling; that "These representatives were sent by the District to attempt to settle local disputes at the Benedict mine"; that the declarations attributed to Scroggs, namely, 'I can't tell you boys when to strike. I can't tell you to strike, but, when I tell you when you don't get what you want why you boys know what to do', "took place while Scroggs was on these missions"; that the "calling of the strikes was one way of 'settling' a labor dispute" and that consequently the jury "were amply justified in finding that Scroggs was acting within the scope of his employment when he made the declarations in question (A. 7a-8a).

Finding there was error in the damages, the Sixth Circuit set aside the trial court's judgment and remanded the case "solely for a redetermination, in accordance with the views expressed in this opinion of the amount of damages Benedict is entitled to recover from the unions" (A. 14a, 21a).

REASONS FOR GRANTING THE WRIT

1. The Sixth Circuit has decided a federal question, important in processing of collective bargaining agreements, in conflict with interpretative standards dealing with the right of labor to strike fixed by this Court in *National Labor Relations Board* v. *Lion Oil Co.*, 352 U. S. 282, 293, and with an applicable, recent decision of the District of Columbia Circuit in *International Union, United Mine Workers of America et al* v. *National Labor Relations Board*, 257 F. 2d 211 (1958), and in probable conflict with its own approval[21] of the district court's results in *Garmcada Coal Co.* v. *International Union, UMWA*, 1954, DC, E.D. Ky., 122 F. Supp. 512.

Herein there is Sixth Circuit admission that the "no strike" provisions in contracts antedating the 1950 Agreement "were superseded" and that the "right to strike" was "expressly preserved in the 1950-52 agreement" (A. 6a); yet totally inconsonant therewith is the Sixth Circuit's antithetical conclusion that "a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement" (A. 6a). Thus, the Sixth Circuit holds that pending settlement of a dispute there shall be no strike or work stoppage, thus negating the very right to strike which it declared the contracting parties agreed had been preserved (A. 6a).

The Sixth Circuit's fallacy is made manifest by the bargaining history between the 1950 Agreement's signatories. First, the earlier contracts, *in the settlement*

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[21] *Garmcada Coal Co.* v. *International Union, UMWA*, 6 Cir., 230 F. 2d 945.

of disputes section, committed miners to the covenant that "*Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute*"; but this proscription was first deleted in the 1947 Agreement and such deletion was continued in the 1950-1952 Agreements. Second, the Sixth Circuit reasoned that the 1950 Agreement made disputes subject to the grievance procedures because of the word "exclusively" found in the Agreement's paragraph 3 of "Miscellaneous" section; but the Sixth Circuit's reasoning overlooked and ignored the further contract fact that "stoppages", as well as disputes, were to be settled in similar manner; and that the contracting parties thereby manifested obvious recognition that stoppages would occur. Such recognition, coupled with abrogation of the no-strike provisions of earlier contracts, including the covenant that pending disputes there would be no stoppages, is positive proof that stoppages pending settlement of disputes were not prohibited and were not violative of the 1950 Agreement. The Sixth Circuit's conclusion fails to recognize that it is one thing to agree to process "stoppages" under the settlement procedures but an entirely different matter to say that there is agreement not to resort to a stoppage pending settlement. The Sixth Circuit overlooks that a strike, juridically defined as a lawful economic instrument,[22] does not of itself resolve disputes[23] but that settlement thereof is only through collective bargaining, and that is precisely what occurred in the

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[22] *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209.

[23] Accord: *W. L. Mead, Inc.* v. *Int. Bro. of Teamsters*, DC, Mass., 126 F. Supp. 466, 467, wherein it is said: ". . . a strike never 'adjudicates' anything".

instant case. The fact that the earlier agreements specifically prohibited stoppages pending settlement shows that when the parties intended such result they knew how to effectuate it in clear and positive language. Its absence from the 1950-52 Agreements is a positivism that the result reached by the Sixth Circuit was not the intent of the Agreement's signatories.

The Sixth Circuit's conclusion is even more patently offensive in its applicability to the 1952 Agreement. As previously shown, the 1952 Agreement did not require that *stoppages* be settled under the grievance machinery, *nor indeed that disputes be settled exclusively thereunder.* By this latter Agreement the parties agreed that (1) stoppages were not to be settled under the grievance machinery and (2) the grievance machinery no longer constituted the exclusive method for settlement of disputes. If the contracting parties intended that there should be no work stoppages pending settlement of disputes, why would they have studiously deleted the earlier contracts' requirement that "pending the hearing of disputes, the Mine Workers shall not cease work" and why would they, with assiduity, have provided for the rescission of the no-strike and like clauses? It is indeed illogical and unsound to argue that the parties would have thus so unequivocally manifested the miners' right to strike, even during the pendency of the dispute settlement, and then in the same instrument to have intended, by implication, to proscribe strike action; but such is the Sixth Circuit's result. It attributes to the signatories the doing of a meaningless thing. The legislative history of the Act clearly supports the view that labor's right to strike remained an appropriate subject for collective

bargaining;[24] and the Sixth Circuit's interpretation finds challenge in this Court's declaration that "Where there has been no express waiver of the right to strike, a waiver of the right during such a period is not to be inferred".[25] The Sixth Circuit's conclusion results in an emasculation of the parties' agreement, contrary to this Court's professions that plain provisions of a valid contract may not be ignored. *Colgate-Palmolive Peet Co.* v. *NLRB*, 338 U. S. 355, 363. It finds challenge, too, in the principle that denies implied terms which "are inconsistent with expressed provisions. 12 Am. Jur., Contracts, Section 239. Aptly stated are Mr. Justice Cardozo's words in *Marchant* v. *Mead-Morrison Mfg. Co.*, 252 N.Y. 284, 169 N.E. 391, 393:

> "Courts are not at liberty to shirk the process of construction under the empire of a belief that arbitration is beneficent . . . No one is under a duty to resort to these conventional tribunals . . except to the extent he has signified his willingness . . . [Contracting parties] . . . are not to be trapped by a strained and unnatural construction of words of doubtful import into an abandonment of legal remedies, unwilled and unforeseen."

The District of Columbia Circuit[26] was concerned with the issue presented herein in *International Union, UMWA* v. *NLRB; supra*, as it related to the 1952

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[24] Senate Report No. 105, 80th Congress, 1st Session, pp. 17-18, reported in Legislative History of the Labor Management Relations Act, 1947 (Government Printing Office), Vol. 1, p. 424.

[25] *National Labor Relations Board* v. *Lion Oil Co.*, 352 U. S. 282, 293. That Board's yardstick is that renunciation of the right to strike "will not be found to exist unless expressed in clear and unequivocal language". *Textron Puerto Rico*, 107 NLRB 583, 587.

[26] Herein called the "District Circuit".

Agreement and reached a conclusion contrary to that of the Sixth Circuit herein. Noting that a "strike while collective bargaining is going on, and for the coercive purpose of obtaining a favorable bargain, is a rather ordinary occurrence", absent a contract not to strike, the District Circuit rationalized that "It is hardly conceivable that a stoppage of work could occur except as a consequence of a dispute which would be cognizable under the grievance procedure" (257 F. 2d 211) and that

> "If we are to credit the parties with normal capacity to reason and express themselves, we cannot read subsection 3 as a 'no strike' agreement . . .".

The Sixth Circuit noted the inconsonancy of its decision with that of the District Circuit but cast its preference with the views of the dissenting Judge, the Fourth Circuit's *United Construction Workers* v. *Haislip Baking Co.*, 4 Cir., 223 F. 2d 873, and the First Circuit's *W. L. Mead, Inc.* v. *Int. Brotherhood of Teamsters*, 126 F. Supp. 466, 1954, DC, Mass., aff'd. 230 F. 2d 576.

The District Circuit in *International Union, United Mine Workers of America* v. *NLRB*, *supra*, appraised the *Haislip Baking Co.* and the *W. L. Mead, Inc.* cases "as expressions which support the Board's preference" (257 F. 2d 217) but declared that "Such a preference is, however no justification for, by the process of benevolent interpretation, making a contract for the parties which, to a moral certainty, they did not make for themselves" (257 F. 2d 217-8). Such reasoning, petitioners submit, is likewise apposite to the Sixth Circuit's conclusion herein. The reasoning employed in the dissent (257 F.2d 218)

in the District Circuit case that the strike constituted "pressure tactics" which were "in violation of *express* contract provisions" is not only contrary both to the bargaining history of the contracts and to the specific language thereof, but reflects also the dissenter's total lack of familiarity with or concern for the congressionally-declared policy that the right to strike shall be a subject for collective bargaining, that the Act's legislative history supports the view that the right to strike was preserved and so recognized by this Court in *NLRB* v. *International Rice Milling Co.*, 34 U. S. 665, 673, and this Court's standard in *Lion Oil Co.* (fn. 25 herein) that absent an express waiver, an implied waiver of the right to strike is not to be inferred. And, since Benedict's cross-claim is based, in part, upon Section 301 of the Act, it is significant that the dissent ignores the congressional command, as did the Sixth Circuit also, found in the Act's Section 13 that "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike". The dissent's unsoundness is plenarily demonstrated in its statement that "the presence or absence of a 'no strike' clause is beside the point" (257 F. 2d 219). The Sixth Circuit's agreement with the dissent, adopting its fallacies and infirmities, thus of necessity renders and stamps the Sixth Circuit's conclusion as tainted, untenable and erroneous.

The Sixth Circuit's use of the *Haislip* and *Mead* cases in support of its conclusion is abortive. So far as the 1950 Agreement is concerned, neither *Mead* nor *Haislip* contained positive covenants, as does the 1950 Agreement, that prior no-strike clauses are rescinded

and made null and void; they contained only arbitration procedure provisions; and it is noteworthy that in *Mead* the district court's opinion declares that "an arbitration clause is not the same thing as a 'no strike' clause, and cannot . . . have such broad consequences" (126 F. Supp. 467) and that there was no testimony "that the Union specifically wanted to protect its right to strike" (126 F. Supp. 469). As to the 1952 Agreement, *Mead* and *Haislip* are clearly distinguishable, for, unlike the 1952 Agreement from which the parties had by collective bargaining deleted the word "exclusive", both *Mead* and *Haislip* agreements, silent as to any prior no-strike clauses, required the grievance machinery to be the *exclusive* method.

Further, there is probable conflict between the Sixth Circuit's conclusion herein and its approval of the district court's reasoning in *Garmeada Coal Co.* v. *International Union, UMWA*, 122 F. Supp. 512, aff'd., 6 Cir., 230 F. 2d 945, which concerned itself, in a damage action against UMW, a local union and a district, with the right to strike under the 1950 Agreement; and although the trial court incorporated in its decision the "Settlement of Local and District Disputes" section of the Agreement, it observed that the miners were "pursuing their right to strike regardless of the provisions of the" agreement (122 F. Supp. 518).

The foregoing discussion demonstrates the conflict of the Sixth Circuit's conclusion with decisions of this Court and of the District Circuit, in addition to its being erroneous. Congress having made it clear that the right to strike was a matter for collective bargaining and had been preserved as a matter of federal policy, except as that body had curtailed it in the Act or as labor had contractually waived such right, a

judicial opinion, such as the instant one, which has been translated into a money judgment for damages, negating such right should appropriately be reviewed, and this is particularly true where, as here, the agreement is one covering so important an industry as the bituminous coal industry and covering conditions of employment of hundreds of thousands of coal miners.

2. The Sixth Circuit's conclusion of UMW's and District 28's responsibility to Benedict for the work stoppages is premised upon (a) its approval of the district court's jury instruction that as a matter of law "District 28 and its agents were agents of the International Union with respect to the activities involved herein" and (b) that District 28's field representative Scroggs told Benedict employee Scott prior to the first strike and several times thereafter, "I can't tell you boys when to strike. I can't tell you to strike, but when I tell you when you don't get what you want why you boys know what to do" (A. 7a-8a). The Sixth Circuits conclusions have thus decided federal questions of union responsibility in a way which conflicts with applicable decisions of this Court, the Fourth Circuit and the Sixth Circuit and is violative of the Act's Section 301(b) and (c) and of Congress' intent in enacting such provisions. The Sixth Circuit's conclusions pose issues important in the administration of labor law, warranting review by this Court. *Local Union No. 10, etc. v. Graham*, 345 U.S. 192.

The Sixth Circuit's imputation of responsibility to UMW for acts of a District 28 field representative on the basis that "District 28 and its agents were agents of "UMW," as the jury was charged (R. 729a), finds full challenge in the *Coronado* doctrine

enunciated and implemented by this Court more than thirty years ago when, applying common law principles of agency, it made clear that mere affiliable relationship between an affiliate and a parent organization does not establish an agency. Its mandate in the *Coronado* cases[27] was that UMW and an affiliate district were separate juristic entities under provisions of the UMW's Constitution (which are identical with those in evidence in this case) and that the juridical test to be employed in determining parent organization responsibility for affiliate conduct was one of "actual agency" and whether the parent organization was "shown by any substantial evidence to have initiated, participated in, or ratified" wrongful conduct. Current efficacy of the *Coronado* doctrine in determining union responsibility in the field of labor relations is mirrored by decisions of federal courts and the National Labor Relations Board. Soon after Taft Hartley Act's adoption, the latter agency, interpreting that Act's agency section 2(13), declared the Board "has a clear statutory mandate to apply the ordinary law of agency" and proclaimed "the authority of the *Coronado* cases";[28] and recently it had occasion again to point out that the 'overwhelming judicial authority" has approved the doctrine that an union affiliate is a juristic entity separate from its international parent organization, citing the *Coronado* cases.[29] The Sixth Circuit itself recognized that a local union and a district affiliated with UMW were

[27] *UMWA* v. *Coronado Coal Co.*, 259 U. S. 344, 393, 395; *Coronado Coal Co.* v. *UMWA*, 268 U. S. 295.

[28] *Sunset Line and Twine Co.*, 79 NLRB 1487, 1507, 1514, fn. 57.

[29] *Franklin Electric Construction Co.*, 121 NLRB No. 26, 42 LRRM 1301, 1303 (July 24, 1958).

entities separate from UMW in *Garmcada* (230 F. 2d 945).[30]

In *Haislip*, too, the Fourth Circuit, concerned with the Act's Section 301(b) and (e) and denying UMW's responsibility for conduct of agents of United Construction Workers, declared (223 F. 2d 877) that there is no liability "on the part of a union for a strike with which it has had nothing to do".

Moreover, in *Garmcada* the trial court held that strike action by a local union officer was not attributable to either the UMW or an affiliated district.[31] In opposition to its conclusion and action in the instant case, the Sixth Circuit in *Garmcada* (230 F. 2d 945) approved, citing the *Haislip* case.

The Sixth Circuit's conclusion that District 28's agent Scroggs was an UMW agent finds challenge, too, in the *Coronado* cases. Therein (259 U. S. 393) this Court made it clear that only UMW's Executive Board, under the Union's Constitution, could "ratify a local strike"; and there is a total lack of evidence herein of any such Executive Board authorization.

There is also decisional challenge in imputing to UMW and District 28 responsibility for conduct attributed to Scroggs.

[30] In *Garmcada*, 122 F. Supp. 512, the district court filed "Additional Findings and Conclusions" on August 5, 1954, which are unreported but are set forth in the Appendix hereto, *post*, p. 23d, holding that UMW, a local and a district thereof "did not together constitute a single entity"; and upon appeal the Sixth Circuit agreed (230 F. 2d 945).

[31] The trial court held that "[] the act of the Local by engaging in the strike [] was not the act of the defendant International Union or District [] (A. 23a).

To hold UMW and District 28 responsibile, the Sixth Circuit imputed to them the statement allegedly made by District 28's field representative Scroggs to Scott (*ante*, p. 36). Noting that Section 301(e) makes actual authorization of specific facts "unnecessary" rather that "not controlling" as the Act provides, and that the fact that District 28's representatives lacked strike authority was not controlling, the Sixth Circuit reasoned "These representatives were sent by the District to attempt to settle local disputes at the Benedict mine", the "declarations attributed to Scroggs all took place while he was on these missions" and that "The jury were amply justified in finding that Scroggs was acting within the scope of his employment when he made the declarations in question" (A. 7a-8a). The specionsness of such reasoning is found in the Fourth Circuit's *Haislip* case.

Haislip, like the instant case, dealt with UMW's and United Construction Workers' responsibility for alleged wrongful conduct of the Construction Workers' regional director and field representative called in by an employer in connection with a strike by employees. Witnesses attributed to the regional director the statement, in response to an inquiry by one of Haislip's employees as to when they were to return to work, "You will go back to work when I tell you to and not before" (223 F. 2d 875). In reversing a judgment against both unions and directing the trial court to enter judgment for them,[28] the Fourth Circuit

[28] Application for certiorari by Haislip Baking Company was denied, 350 U. S. 847. The Fourth Circuit was concerned with the agency definition in the Act's Section 301 (e), which is identical with that found in the Act's Section 2 (13). See Appendix hereto, p. 25a.

rejected the claim that the regional director and field representative had implied authority in the matter, saying (223 F. 2d 878):

> "It is hardly conceivable that authority to adopt, to participate in or to encourage such strikes, which are clearly inimical to the interests of a union, should be vested in field officers or regional directors. We find nothing in the record to justify a finding that either Morris or Belcher had such authority."

In the instant case it appears affirmatively that Scroggs had no authority to call a strike; UMW's Constitution fully challenges the right of a District agent to call one; and UMW's directive against unauthorized strikes clearly rejects either actual or implied authority to do so. Thus are the infirmities of the Sixth Circuit's holding made plain and positive.

United Mine Workers of America v. *Patton*, 4 Cir., 211 F. 2d 742 (1954), cited by the Sixth Circuit (A. 8a), is inapposite. Whereas in *Patton*, the Fourth Circuit based UMW's responsibility upon its finding that "in carrying on organizational work the field representative is engaged in the business of both the international union and the district" (211 F. 2d 746), in *Haislip* it distinguished the *Patton* ruling, saying that the Haislip strike had not arisen out of activities in which the defendants therein "had an interest and in which their representatives might be held to have implied authority to participate in protection of that interest" (223 F. 2d 878). Thus, in the instant case, the stoppages concerned matters of interest to the local only, the Sixth Circuit's opinion having rejected a strike which concerned a dispute "national in scope" as being violative of the Agreements (A. 7a). Thus, another infirmity of the Sixth

Circuit's conclusion is reflected in its violation of the rules that an agent's authority "includes only authority to act for the benefit of the principal" (2 Am. Jur., Agency, Section 85) and "it is inferred that an agent has authority to act only for the principal's benefit" (Restatement of the Law, Agency, Vol. 1, section 166(b); p. 406).

The question of a parent labor organization's liability and responsibility for alleged wrongful conduct of an affiliate and of an affiliate's agent, as well as the question of the affiliate's liability therefor, pose important questions in labor relations. A judicial interpretation of that liability and responsibility which erroneously interprets the Act's agency provisions and which offends both the intent of Congress and judicial precedents and is at total variance with legal principles followed by federal courts and the National Labor Relations Board in the field of labor relations, should be reviewed.

3. The insufficiency of evidence upon which to predicate petitioners' responsibility for the alleged strike activity, as to whether there was support for the jury's finding and the trial court's approval thereof that petitioners' representatives with authority had induced strikes, that petitioners had failed to observe the grievance procedures and other provisions of the Agreements, and that such strikes were cognizable under the grievance procedures, was an issue asserted in the trial court and Sixth Circuit (R. 740a-742a). Petitioners again complain of such insufficiency and the Sixth Circuit's failure and refusal to sustain petitioners' position. Heretofore, in damage actions authorized by a federal statute this Court has, under the certiorari process, concerned itself with the issue

of an asserted insufficiency of the evidence. *Herdman v. Pennsylvania Ry. Co.*, 352 U.S. 518. Like concern is presented herein. Approbation of union responsibility upon testimony of the kind found herein in connection with the processing of day-to-day disputes arising under collective bargaining agreements would indeed be invitatory in future agreements to total or partial rejection of grievance machinery provisions currently found as a satisfactory medium for settling disputes. The issue of insufficiency of evidence is important in the administration of labor law, meriting issuance of the writ of certiorari. *Local Union No. 10, etc. v. Graham, supra.*

The trial court charged the jury, not only that the right to strike did not exist, but that UMW and District were liable upon jury belief that strike action by Benedict's employees were encouraged, suggested or ratified by District 28's officers, representatives or agents (R. 729a) or if UMW representatives "failed or refused to use their good officers, as provided in "the Agreements for adjudication of disputes (R. 729a).

In the trial court[33] and in the Court of Appeals, petitioners contended, and now contend, the evidence is insufficient to support a jury finding that UMW and District 28 violated the Agreements in connection with the various strikes discussed herein (*ante*, p. 17-25). The Sixth Circuit, like the trial court, disagreed with such contention and held that such strikes "resulted from localized labor disputes which were cognizable under the" contracts settlement procedures (A.

[33] In the trial court, this contention was included in petitioners' motions for directed verdict (R. 465a, 713a), both denied, in their motion for a new trial, likewise overruled (77a, 86a), and in their exceptions to the trial court's jury charge (R. 738a-742a).

7a), concluded that the strikes were in contravention of the Agreement (A. 6a), and gave an affirmative answer to what it classed "the real issue", namely, "whether the District's agent did induce the strikes in question (A. 7a).

Noting that the evidence on that issue was "sparse and conflicting" but "sufficient to sustain the jury's finding", the Sixth Circuit quoted a statement attributed to District 28's field representative Scroggs by Benedict's former employee Scott, denied by Scroggs (A. 8a), that, "I can't tell you boys when to strike. I can't tell you to strike, but when I tell when you don't get what you want why you boys know what to do" (A. 7a-8a), and utilized it as the sole predicate for its conclusion that petitioners were responsible for the strikes. While the Sixth Circuit observed that such statement was "made prior to the first strike and several times thereafter" (A. 7a-8a), on direct examination Scott was unable to fix the time or times of such alleged statement.[39] While Scott declared Scroggs made the statement *to him* several times (R. 408a, 411a) during the period 1950 to 1953, on cross examination he was unable to fix the time, saying "That was all I know about it"; but finally on redirect he responded affirmatively to a question by Benedict counsel whether the statement was before the first strike and stating that there were several strikes after the statement was made (R. 424a). *Significantly, no*

[39] Asked if the statement had been made at the time of the seniority or *first* strike or prior thereto, Scott replied, "Well, I don't remember whether right at that time or not . . " (R. 408a). Again, Benedict counsel inquired:

"Q. At that particular strike did he advise you as to whether or not you knew what to do?", and Scott answered,

"A. I can't remember right off whether he did or not at that strike" (R. 408a).

other employee related that such statement was made; even Scott's testimony is that the statement was made only to him; and Scott never transmitted it to any other employee. Actually Scott admits he called none of the strikes (R. 423a).

When it is considered that Scott's testimony is the sole support for the jury award of damages against UMW and District 28, petitioners submit that a review of this case is most appropriate. As was stated in the district court's *Garmeada* case (122 F. Supp. 518):

> "Vicarious liability should rest upon more convincing evidence than that relied upon by plaintiff".

Petitioners likewise assert that petitioners' liability should rest upon more convincing evidence than that relied upon by the jury, the trial court and the Sixth Circuit.

In addition to contending that the right to strike did not exist (which petitioners deny and have already discussed), Benedict complained that since the disputes were not submitted to arbitration, and petitioners failed to use their best efforts to prevent strikes, the agreements were violated. Initially to be noted is the fact that the settlement of disputes section enumerated several steps in the procedures, the last of which was arbitration. The agreements neither required nor contemplated that every dispute should be arbitrated. To the contrary, the procedures contemplated that *before the arbitration step*, through bargaining the parties would undertake to effectuate a settlement of the disputes short of arbitration (R. 104a-5a). The settlement provisions provided that an earnest effort would be made to settle differences immediately; and step 3 read "Through District representatives of the United Mine Workers of America and

a commissioner representative (where employed) of the Coal Company (R. 104a-105a).

In the first strike situation, the undisputed evidence is that Scroggs was "trying to get the dispute settled" (R. 430a, 567a, 574a). Likewise the evidence shows that in every stoppage situation, upon Benedict's request, a District 28 representative responded for the purpose of effecting settlement of the dispute between Benedict and the miners pursuant to the grievance procedures in the contract. Settlement of the disputes thus obviated the necessity of resorting to the last step of the grievance machinery which was the arbitration step. Consonant with the district court's reasoning in *Garmeada* (122 F. Supp. 518) that "these representatives of the Union did all that could reasonably have been expected of them", in the instant case in effecting settlement of the disputes, district employees did all that reasonably could have been expected.

Further, neither the vacation pay dispute, the credit dispute, nor the Campbell or the Big Mountain dispute was cognizable under the Agreements. Submission of these disputes to the jury as contract violations was erroneous, as were its findings thereon.

4. Upon Scott's testifying that Representative Scroggs told him, a union member, that "When we didn't get what we wanted, we knowed what to do", the trial court, over petitioners' objection (R. 408a), permitted Scott to answer the question "What did you understand him to mean when he said, 'You know what to do'?" with the response "Well, we know, when he told us, we knowed to strike". Since, as above shown, Scott alone directly connected District 28 with

any of the strikes, the effect of his answers upon the jury cannot but have been prejudicial to petitioners. In a comparable situation the Tennessee court in *Girdner* v. *Walker*, 48 Tenn. 186, held it error to give "the conclusion of the witness as to the contents of the letters and not the contents". So, too, in 32 C.J.S., Evidence, Sec. 451, it is said that, "a witness cannot state his understanding of the language used" in writings, and he may not "state the impression made on him by oral statements" and that

> "One who heard a statement or conversation may not testify as to what he or another person understood by it".

The highly and obviously prejudicial answer stating such understanding permeates the entire jury finding on the issue of liability as to UMW and District 28 and is indeed invitatory to a review of the matters set forth herein. Though petitioners contended this to be prejudicial error in the Sixth Circuit, it did not concern itself therewith in its opinion. This issue, a ground for a new trial (R. 77a), should be reviewed.

5. While the Sixth Circuit stated that "it is unnecessary" to consider whether the M. M. Campbell strikes and the Big Mountain Coal Company strike (*ante*, pp. 20, 23) were violative of the Act because of its having decided that the strikes were prohibited by the Agreements, since the case is remanded for the ascertainment of damages, and the jury's finding of damages included amounts for alleged losses in each of these strikes it becomes imperative that the issue of whether the evidence warranted submission to the jury of these questions be reviewed for guidance on the retrial.

In the trial court, petitioners asserted their position in connection with such disputes and alleged strikes in their motions for directed verdicts (R. 465a, 713a-4a) and in their jury charge exceptions (R. 739a, 740a), and in the motion for a new trial (R. 77a, 79a) which were denied (R. 86a, 466a, 716a). Discussion (p. 42-45) of the insufficiency of evidence of petitioners' responsibility is applicable to these situations and reference is made thereto. The situations will be considered *seriatim*.

(1). Facts relating to the M. M. Campbell strikes are set forth herein (p. 20). Benedict contended that such strikes were violative of the Act's Section 303, in addition to being violative of the agreements. Section 303's provisions appear in the Appendix hereto (p. 26a). Campbell's contract with Benedict provided for payment to him of $25.00 a day for services "as boss" (R. 182a-3a, 352a) which made of him a person in the nature of a foreman more than an "independent contractor". Campbell testified that while he hired the men who worked with him Benedict furnished the money for their wages each week, as well as furnishing the materials for the work (R. 182a). Upon quitting Campbell received nothing in addition to the money he received as the work progressed and he was not asked to return any of the money "advanced" to him (R. 361a-2a). *United Brick and Clay Workers* v. *Deena Artware, Inc.*, 6 Cir., 198 F. 2d 637, cert. den. 344 U.S. 897, rehearing den. 344 U.S. 919, declares that Section 303 contemplates a "secondary" pressure on a neutral employer to bring pressure on the primary employer involved in the dispute. Translating these terms to the instant case Benedict would be the neutral employer and Campbell the primary

employer in the dispute. Petitioners submit that Benedict and Campbell were one and the same employer and therefore there is not in this situation a neutral and a primary employer so as to bring the M. M. Campbell work stoppages within Section 303's scope and therefore there was not a sufficient evidential basis to warrant the Court's submitting to the jury the question of whether petitioners had violated, and in the jury's finding that they had violated, Section 303 of the Act.

(2). Section 303 prohibits a strike where an objective is one of four specifically stated objectives. Under Benedict's theory the objection of the Big Mountain Coal Company strike on May 18 was to force Big Mountain's employees into the Benedict local union (R. 311a). A strike for such purpose is definitively not one to accomplish any one of the four objectives enumerated in Section 303. Hence as a matter of law there is no evidence to support a finding of the violation of said section with regard to this strike.

Further, as stated in the Campbell strike situation, Section 303 contemplates a neutral and a primary employer. Benedict and Big Mountain were not neutral; their operations were at the same location; they were integrated to the point that the same employees processed the coal produced by both Benedict and Big Mountain; and it was a part of their agreement that all of Big Mountain's coal was to be sold through the Benedict sales agency, a principal stockholder of which was Benedict's President.

For such reasons it was clearly error for the court to submit to the jury the question of whether petitioners had violated, and in the jury's finding that they had violated, Section 303 of the Act.

CONCLUSION

For the foregoing reasons, Petitioners, and each of them, pray that this Petition for Writ of Certiorari should be granted and that a Writ of Certiorari issue to review the decision and judgment of the United States Court of Appeals for the Sixth Circuit entered in said case No. 13,056 on September 26, 1958, as aforesaid.

Respectfully submitted,

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